

Lynda J. Zadra-Symes (SBN 156,511)
 Lynda.Zadra-Symes@kmob.com
 Jeffrey L. Van Hoosear(SBN : 147,751)
 Jeffrey.VanHoosear@kmob.com
 David G. Jankowski (SBN 205,634)
 David.iankowski@kmob.com
 KNOBBE, MARTENS, OLSON & BEAR, LLP
 2040 Main Street
 Fourteenth Floor
 Irvine, CA 92614
 Phone: (949) 760-0404
 Facsimile: (949) 760-9502

Attorneys for Defendant/Counter-Plaintiff,
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
 CERAMICS, INC. dba GLIDEWELL
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.
 SACV11-01309-DOC(ANx)

**DECLARATION OF DR.
 THOMAS NUSSEAR IN
 SUPPORT OF KEATING
 DENTAL ARTS, INC.'S
 MOTIONS FOR SUMMARY
 JUDGMENT**

Honorable David O. Carter

1 I, Dr. Thomas Nussear, hereby declare as follows:

2 I am a practicing dentist who has purchased dental restorations from
3 Keating Dental Arts, Inc. ("Keating"). My dental office is located at 40 S. Main
4 St. Smithburg, MD 21783. I have personal knowledge of the matters set forth
5 herein. If called upon to testify, I could and would testify as follows:

6 1. I am licensed to practice dentistry in the state of Maryland. I
7 received an undergraduate chemistry degree from the University of Maryland
8 at College Park in 1995. I received a Doctor of Dental Surgery degree from the
9 University of Maryland at Baltimore 1999. I have been practicing as a licensed
10 dentist for 13 years. During that time, it has been a regular part of my practice
11 to treat patients in need of dental restorations.

12 2. To address my patients in need of dental restorations, it has been
13 my practice to purchase crowns and bridges from dental laboratories that
14 manufacture the restorations in response to my specifications. In this regard,
15 I provide the dental laboratories with a prescription form that identifies the
16 patient, the tooth (or teeth), and the specific dental restoration product that I
17 would like manufactured for the patient.

18 3. Since my dental practice began in 1999, I have ordered dental
19 restorations from a number of different dental laboratories. I have been ordering
20 dental restorations from Keating since August 2006. I am aware of Glidewell
21 Laboratories but only infrequently order dental restorations from their lab.

22 4. I have ordered many different types of dental restorations from
23 Keating, including porcelain fused to high noble crowns, gold crowns, and
24 crowns containing zirconia.

25 5. The first time I ordered a crown containing zirconia from
26 Keating was in January 2008 when I ordered a "KDZ" crown. In 2008,
27 Keating's "KDZ" crown had a zirconia substructure with a porcelain overlay.

28

1 6. The first time I ordered a full contour zirconia crown from Keating
2 was in May 2011 when I ordered what Keating calls a KDZ Bruxer crown.

3 7. I learned of the KDZ Bruxer when I contacted Keating to find out
4 if they offered an all zirconia crown. I was already a customer of Keating at
5 that time and preferred to receive a crown made by their lab. An employee at
6 Keating told me about the KDZ Bruxer product.

7 8. In May 2011 I ordered a KDZ Bruxer crown from Keating for
8 tooth #3 for one of my patients. Attached as **Exhibit A** is a true and correct
9 copy of the Keating Dental Arts prescription form that I submitted to Keating
10 for this order.

11 9. In the order form attached as Exhibit A, I specified the product that
12 I was ordering by writing "Bruxzir crown" in the "Instructions" section of the
13 form. I wrote "bruxzir" on the prescription form because to me that term meant
14 a full contour zirconia crown for bruxers. I knew I was ordering the crown from
15 Keating and I wanted to receive a crown made by Keating.

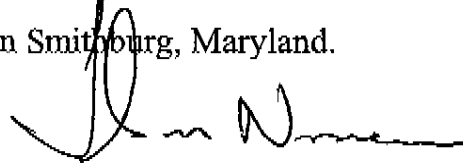
16 10. When I wrote "bruxzir" on the prescription form, I did not intend
17 to order a crown made by Glidewell Laboratories. Nor did I intend to order a
18 crown made from material provided by Glidewell Laboratories. When ordering
19 the KDZ Bruxer crown, I did not think there was any affiliation between
20 Keating and Glidewell Laboratories.

21 11. It is a regular part of my dental practice to continually educate
22 myself on new products, treatments, and techniques available within the
23 dental profession. I pursue this additional learning by speaking with other
24 dentists, participating in a dental study club of which I am a member, reviewing
25 literature, and taking continuing education classes. From these interactions,
26 I came to understand the terms "bruxzir" and "bruxer" to be synonymous as
27 each is pronounced the same and both terms are commonly used to refer to all
28

1 zirconia crowns which are commonly used for bruxers. They do not identify
2 any particular manufacturer.

3
4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed November 6, 2012, in Smithburg, Maryland.

7
8 

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Dr. Thomas Nussear

EXHIBIT A

CONFIDENTIAL
ATTORNEY'S EYES ONLY

Keating
Dental Arts
Creating smiles everyday

Phone: (949) 955-2100 Fax: (949) 955-2199
16881 Hale Avenue, Irvine, CA 92606
E-mail: shade@keatingdentalarts.com
www.keatingdentalarts.com

Doctor's Account # NUS Phone # (301) 824-2080
Dr. DR. THOMAS NUSSEAR
Patient REDACTED
LAST FIRST
Toll Free: (800) 433-9833 Date Due In Office 5-12-11

PLEASE SEND THE FOLLOWING
☐ RX forms ☐ Mailing Labels
☐ Boxes

SPECIAL ENCLOSURES LAB USE ONLY
☐ Photo (s) ☐ Analog
☐ Models ☐ Implant Parts
☐ Shade Tab ☐ Impression I
☐ Bite ☐ Other _____

Rx SPECIFIC INSTRUCTIONS
*STANDARD UNLESS SPECIFIED.

Crown #3

Bruxer crown

Shade: C1.5

Any questions
please call.

Signature: [Signature]

D.D.S. License #: 12633

TERMS: Customer agrees to company policy as stated on reverse.

Age: _____ Sex: _____

☐ Dr. to Die Trim ☐ Metal Try-In

☐ Finish to Porcelain

Please indicate the distribution of hues
and the types of characterizations desired:

SHADE INSTRUCTIONS

Vita-Lumin: _____ Vita-3D: _____

Chromococop: _____ Stamp Shade: _____

Moritzake: _____ Other: _____



BUCCAL COLLAR DESIGN

- ☐ Hairline or _____ mm on Buccal
☐ Porcelain Junction Margin*
☐ Porcelain Butt Margin (90 shoulder req.)

METAL DESIGN

- ☐ ☐ All Porcelain coverage
☐ ☐ Metal Coping with Porcelain coverage*
☐ ☐ Metal Occlusal excluding Buccal CUSP
☐ ☐ Metal Occlusal including Buccal CUSP

PONTIC DESIGN



ANTERIOR DESIGN

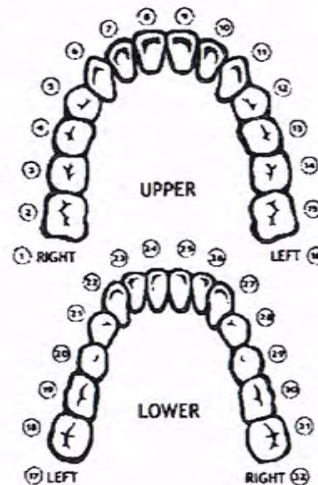


OCCUSAL STAINING

- ☐ None ☐ Medium
☐ Light* ☐ Dark

IF NO OCCUSAL CLEARANCE

- ☐ Metal Occlusion
☐ Reduction Coping
☐ Spot Opposing
☐ Make Permanent Note



PFM

- ☐ Fused to Non-Precious*
☐ Fused to Semi-Precious
☐ Fused to White High Noble
☐ Fused to Yellow High Noble
☐ Fused to Captak

LAB TIME: 3 DAYS

IMPLANTS

- ☐ Porcelain fused to Semi-Precious*
☐ Porcelain fused to White High Noble
☐ Porcelain fused to Yellow High Noble
☐ Porcelain fused to Captak
☐ Procera All-Ceramic
☐ KDZ Zirconia
☐ Procera Custom Abutment:
☐ Titanium ☐ Ceramic
☐ Atlantis Custom Abutment:
☐ Titanium* ☐ Ceramic
☐ 3i Encode

LAB TIME: 9 DAYS

CAD/CAM

- ☐ KDZ Zirconia
☐ Procera Zirkon

LAB TIME: 5 DAYS

LAB TIME: 9 DAYS

FULL CAST

- ☐ High Noble 62*—Type III
☐ Gold inlay/onlay—Type II (JRVT)
☐ Yellow Semi-Precious
☐ Other _____
Please Specify

LAB TIME: 4 DAYS

ALL-CERAMIC

- ☐ KDA Foil Veneer
Stacked Feldspathic
☐ IPS e.max*
☐ IPS Empress* Esthetic

LAB TIME: 5 DAYS

THERMOFORMED

- ☐ Soft Nightguard
☐ Bleaching Tray
(Form liner or reservoir)
☐ Hard Night Guard
(Thermolam)
☐ Hard Night Guard
(Hand waxed)
☐ Ultra Guard
(Soft & hard for extra comfort)
☐ Clearsplint (Flexible)
☐ Pro-Guard

LAB TIME: 4 DAYS

COMPOSITES

- ☐ Gradi

LAB TIME: 4 DAYS

KDA-TEMPS

- Abutments #s _____ Pontics #s _____
☐ Wire*
☐ Cast Metal Frame
☐ Splinted
☐ Individual

LAB TIME: 4 DAYS

REMOVABLES

- ☐ KDA Denture
☐ KDA Premium Denture
☐ KDA Ultra Premium Denture
☐ Cast Chrome Frame
☐ Setup Teeth In Wax
☐ Partial Framework to Finish
☐ Reline
☐ Custom Impression Tray
☐ Acrylic Stayplate
☐ Valpast* Partial Denture Complete
☐ TCS* Partial Denture Complete
☐ Delineator™

KDA-000642

CONFIDENTIAL ATTORNEY'S EYES ONLY